

SANDERS LAW GROUP

Douglas H. Sanders, Esq.
100 Garden City Plaza, Suite 500
Garden City, NY 11530
Tel: (516) 203-7600
File No.: 124651

Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
SPRINGFIELD DIVISION**

Dennis Clark,

Plaintiff,

v.

The Berkshire Edge LLC,

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Dennis Clark ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against defendant The Berkshire Edge LLC ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement
2. Plaintiff herein creates photographic images and owns the rights to these photographs which Plaintiff licenses for various uses including online and print publications.
3. Defendant owns and operates a website known as theberkshireedge.com (the "*Website*").
4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

5. Plaintiff Dennis Clark is an individual who is a citizen of the State of New York and maintains a principal place of business at 1993 Beech Street, Wantagh in Nassau County, New York.

6. Upon information and belief, Defendant The Berkshire Edge LLC, is a Massachusetts limited liability company with a principal place of business at 100 Alford Road, Great Barrington in Berkshire County, Massachusetts and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

8. This Court has personal jurisdiction over The Berkshire Edge LLC because it maintains its principal place of business in Massachusetts.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because The Berkshire Edge LLC does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which it licenses to online and print publications.

11. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

12. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

13. Plaintiff's photographs are original, creative works in which Plaintiff owns protectable copyright interests.

14. Upon information and belief, The Berkshire Edge LLC is the registered owner

1 of the Website and is responsible for its content.

2 15. Upon information and belief, The Berkshire Edge LLC is the operator of the
3 Website and is responsible for its content.

4 16. The Website is a popular and lucrative commercial enterprise.

5 17. The Website is monetized in that it contains paid advertisements and, on
6 information and belief, Defendant profits from these activities.

7 18. On August 14, 2019, Plaintiff authored a photograph of former New York state
8 Andrew Cuomo speaking in front of several law enforcement officials (the "*Photograph*"). A
9 copy of the Photograph is attached hereto collectively as Exhibit 1.

10 19. Plaintiff applied to the USCO to register the Photograph on or about September
11 30, 2019 under Application No. 1-8117302091.

12 20. The Photograph was registered by the USCO on September 30, 2019 under
13 Registration No. VA 2-172-150.

14 21. On September 27, 2019, Plaintiff first observed the Photograph on the Website
15 in a story dated August 20, 2019. A copy of screengrab of the Website including the Photograph
16 is attached hereto collectively as Exhibit 2.

17 22. The Photograph was displayed at URL: [https://theberkshireedge.com/alan-](https://theberkshireedge.com/alan-chartock-31/)
18 [chartock-31/](https://theberkshireedge.com/alan-chartock-31/) and at URL: [https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-](https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/)
19 [dennis-clark-2/](https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/) (*Exhibit 2-Infringement #1-2*).

20 23. The Photograph was stored at URL: [https://theberkshireedge.com/alan-](https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/)
21 [chartock-31/andrew-cuomo-dennis-clark-2/](https://theberkshireedge.com/alan-chartock-31/andrew-cuomo-dennis-clark-2/).

22 24. Without permission or authorization from Plaintiff, Defendant volitionally
23 selected, copied, stored and displayed Plaintiff's copyright protected Photograph as is set forth
24 in Exhibit "1" on the Website.

25 25. Upon information and belief, the Photograph was copied, stored and displayed
26 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter
27 singularly the "*Infringement*" and collectively the "*Infringements*").
28

1 26. Each Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed
2 tangible medium of expression that was sufficiently permanent or stable to permit it to be
3 communicated for a period of more than transitory duration and therefore constitutes a specific
4 infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1160
5 (9th Cir. 2007).

6 27. Each Infringement is an exact copy of the entirety of Plaintiff’s original image
7 that was directly copied and stored by Defendant on the Website.

8 28. Upon information and belief, Defendant takes an active and pervasive role in the
9 content posted on its Website, including, but not limited to copying, posting, selecting,
10 commenting on and/or displaying images including but not limited to Plaintiff’s Photographs.

11 29. Upon information and belief, Defendant directly contributes to the content
12 posted on the Website by, inter alia, directly employing reporters, authors and editors as its
13 agents, including but not limited to David Scribner whereby Defendant’s Website list him as
14 “Editor-in-Chief” and Alan Chartock whereby Defendant’s Website list him as an “Author”
15 (“*Employees*”).

16 30. Upon information and belief, at all material times the Employees were acting
17 within the course and scope of their employment when they posted the Infringements.

18 31. Upon information and belief, at all material times the Employees were acting
19 within the course and scope of their agency when they posted the Infringements.

20 32. Upon information and belief, the Photographs were willfully and volitionally
21 posted to the Website by Defendant.

22 33. Upon information and belief, Defendant is not registered with the United States
23 Copyright Office pursuant to 17 U.S.C. §512.

24 34. Upon information and belief, the Infringement were not posted at the direction
25 of a “user” as that term is defined in 17 U.S.C. §512(c).

26 35. Upon information and belief, Defendant engaged in the Infringements
27 knowingly and in violation of applicable United States Copyright Laws.
28

preceding paragraphs, as though set forth in full herein.

49. The Photograph is an original, creative work in which Plaintiff owns valid copyright properly registered with the United States Copyright Office.

50. Plaintiff has not licensed Defendant the right to use the Photograph in any manner, nor has Plaintiff assigned any of its exclusive rights in the Copyrights to Defendant.

51. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

52. Defendant's reproduction of the Photograph and display of the Photograph on the Website constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

53. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven or, in the alternative, at Plaintiff's election, an award for statutory damages against Defendant for each infringement pursuant to 17 U.S.C. § 504(c).

54. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C. § 505 from Defendant.

55. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

JURY DEMAND

56. Plaintiff hereby demands a trial of this action by jury.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests judgment as follows:

1 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's
2 rights to the Photograph in violation of 17 U.S.C. §501 et seq. and award damages and monetary
3 relief as follows:

- 4 a. finding that Defendant infringed upon Plaintiff's copyright interest in the
5 Photograph by copying and displaying without a license or consent;
6 b. for an award of actual damages and disgorgement of all of Defendant's
7 profits attributable to the infringements as provided by 17 U.S.C. § 504
8 in an amount to be proven or, in the alternative, at Plaintiff's election, an
9 award for statutory damages against Defendant for each infringement
10 pursuant to 17 U.S.C. § 504(c), whichever is larger;
11 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendants from
12 any infringing use of any of Plaintiff's works;
13 d. for costs of litigation and reasonable attorney's fees against Defendant
14 pursuant to 17 U.S.C. § 505;
15 e. for pre judgment interest as permitted by law; and
16 f. for any other relief the Court deems just and proper.

17
18 DATED: June 8, 2022

19 **SANDERS LAW GROUP**

20 By: /s/ Douglas H. Sanders
21 Douglas H. Sanders, Esq.
22 100 Garden City Plaza, Suite 500
23 Garden City, NY 11530
24 Tel: (516) 203-7600
25 Email: csanders@sanderslaw.group
26 File No.: 124651
27 *Attorneys for Plaintiff*
28